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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Carrison, et al. :
Application No. 10/629,114 :
Filed: July 29, 2003 :
Attorney Docket No. 1001.1659101 :
For: APPARATUS AND METHOD FOR :
TREATING INTRAVASCULAR DISEASE :

This is a decision on the petition, filed August 4, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The Office contended that the above-identified application became abandoned for failure to properly reply to the non-final Office action, mailed August 11, 2005, which set an extendable period for reply of three (3) months. On January 4, 2006, applicants filed an amendment and a request for a two month extension of time and required fee. On March 23, 2006, the Office mailed a "Response to Amendment" stating that the January 4, 2006 amendment was not fully responsive and requesting that applicants comment of several issues listed in the "Response to Amendment." No time period was set for response. No follow-up correspondence was filed by applicants. A Notice of Abandonment was mailed on July 31, 2006.

Petitioners argue that the application is not abandoned because the Office did not set a period for response when it mailed the "Response to Amendment."

MPEP 714.03 states:

An examiner may treat an amendment not fully responsive to a non-final Office action by:

- (A) accepting the amendment as an adequate reply to the non-final Office action to avoid abandonment under 35 USC 133 and 37 CFR 1.135;
- (B) notifying the applicant that the reply must be completed within the remaining period for reply to the non-final Office action (or within any extension pursuant to 37 CFR 1.136(a)) to avoid abandonment;

(C) setting a new time period for applicant to complete the reply pursuant to 37 CFR 1.135(c).

The treatment to be given to the amendment depends upon:

- (A) whether the amendment is *bona fide*;
- (B) whether there is sufficient time for applicant's reply to be filed within the time period for reply to the non-final Office action; and
- (C) the nature of the deficiency.

Where an amendment is *bona fide* but contains a serious omission, the examiner should:

A) if there is sufficient time remaining for applicant's reply to be filed within the time period for reply to the non-final Office action (or within any extension pursuant to 37 CFR 1.136(a), notify applicant that the omission must be supplied within the time period for reply; or B) if there is insufficient time remaining, issue an Office action setting a 1-month time period to complete the reply pursuant to 37 CFR 1.135(c).


The amendment filed on January 4, 2006 appears to be *bona fide*. However, the March 23, 2006 "Response to Amendment" was silent as to the time period for response.

The Office should have (1) notified applicants that the defects in the January 4, 2005 amendment must be addressed within the original time period set for reply or (2) set a one month time period to complete the reply.

The petition under 37 CFR 1.181 is **granted**. The holding of abandonment is withdrawn and the July 31, 2006 Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

After the mailing of this decision, the application will be forwarded to Technology Center AU 3763 for the re-mailing of the March 23, 2006 "Response to Amendment" with a specified new time period for response.

Telephone inquiries may be directed to the undersigned at (571) 272-3230.


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Office of Petitions